


FILED

APR 15 2008

 CLERK

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

VS.

WARREN BLUE BIRD,

Defendant.

CR 04-50029-RHB

ORDER

Defendant


On August 10, 2004, defendant was sentenced to serve 120 months and ordered to pay restitution to Leonard Martinez, Jr. in the amount of \$156 after being found guilty by a jury of the crimes of assault resulting in serious bodily injury and assault with a dangerous weapon. On March 26, 2008, defendant filed a motion to vacate monetary restitution alleging that Leonard Martinez, Jr. had recently passed away. The government opposes the motion.

The purpose of the order of restitution is two-fold. First, it is to compensate a victim for his losses. See United States v. Petruk, 484 F.3d 1035 (8th Cir. 2007). It is also, however, a form of punishment. See id. As a result, the Court, after considering the motion, determines that the order of restitution should not be vacated. Accordingly, it is hereby

ORDERED that defendant's motion to vacate the order of restitution (Docket #57) is denied.

Dated this 14^R day of April, 2008.

BY THE COURT:


RICHARD H. BATTEY
UNITED STATES DISTRICT JUDGE